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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, ETC., ET AL., *Appellants*

v.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, ET AL., *Appellees*

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

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INDEX

	Page
Opinion Below	2
Jurisdiction	2
Statutes Involved	3
Questions Presented	2
Statement	3
A. The Challenged Statutory Scheme	4
B. The Relationships Between the Relevant Professions	9
1. Planning v. Engineering	10
2. Planning v. Architecture	17
3. Planning v. Land Surveying	19
C. The Impact of the Statute	21
The Questions Are Substantial	22
I. The Invidious Discrimination Effected by the Challenged Statute, and the Irrationality of the Legislative Scheme, Appear on the Face of the Statutes Involved	25
II. It Was Plain Error for the New Jersey Supreme Court To Ignore the Trial Court's Findings of Invidious Discrimination and To Assume That, Because a Few Members of the Preferred Groups Were Supposedly Qualified To Be Professional Planners, *All* Members Are So Qualified and May Thus Constitutionally Be Granted Privileges Denied To Competent Planners	31
Conclusion	36

CITATIONS

Cases:

Charleston Federal Savings & Loan Ass'n v. *Alderson*, 324 U.S. 182, 185-6 (1945) 2
Heart of Atlanta Motel v. *United States*, 379 U.S. 241, 252-53 (1964) 25
Louisville Gas & E. Co. v. *Coleman*, 277 U.S. 32, 37 (1928) 24
Manhattan Life Insurance Company v. *Cohen*, 234 U.S. 123, 134 (1914) 2
Morey v. *Doud*, 354 U.S. 457 (1957) 23, 24

Page

United States v. *Carolene Products*, 304 U.S. 144, 152 (1938) 32
Williamson v. *Lee Optical of Okla.*, 348 U.S. 483 (1955) 23, 24

Statutes

New Jersey Municipal Planning Act, L. 1953 c. 433

N.J.S.A. 40:55-1.11 6
-1.12 6

New Jersey Professional Planners Licensing Act, L. 1962, c. 109

N.J.S.A. 45:14A-1 .....3 et seq.
-2 .....7 et seq.
-4 7
-9 .....8 et seq.
-11 .....9 et seq.
-19 8

N.J.S.A. 45:3-5 .....17 et seq.
-5.1 22

N.J.S.A. 45:8-28 .....11 et seq.
-34 11
-35 .....12 et seq.

N.J.S.A. 48:9-28 .....19 et seq.

28 U.S.C. Section 1257 (2) 2

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of New Jersey, entered on February 20, 1967, setting aside an order of the Superior Court, Chancery Division, Mercer County, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

OPINION BELOW

The opinion of the Supreme Court of New Jersey is reported at 227 A.2d 313 (1967) and is set forth in full in Appendix A (pp. 24a-51a). The findings and opinion of the Superior Court, Chancery Division, of Mercer County, New Jersey are unreported but are set forth in full in Appendix A (pp. 1a-24a).

JURISDICTION

This is a suit for declaratory and injunctive relief in which appellants challenged portions of a state statute on the ground that they violate the Federal and State Constitutions. The judgment of the Supreme Court of New Jersey was entered on February 20, 1967. A notice of appeal was filed in the Supreme Court of New Jersey on April 21, 1967.

This Court's jurisdiction to review the decision below on direct appeal is conferred by 28 U.S.C. Section 1257(2). The following decisions sustain such jurisdiction: *Charleston Federal Savings & Loan Ass'n* v. *Alderson*, 324 U.S. 182, 185-6 (1945); *Manhattan Life Insurance Company* v. *Cohen*, 234 U.S. 123, 134 (1914).

STATUTES INVOLVED

Pertinent sections of the New Jersey Professional Planners Licensing Act, L. 1962, c. 109, N.J.S.A. 45:14A-1 *et seq.* are set forth in full in Appendix B hereto.

QUESTION PRESENTED

Where a State legislature has made the accurate factual determination that the profession of city planning requires distinct skills which are not encompassed within the scope of any related profession, may that State, consistent with the Equal Protection and Due Process Clauses of the 14th Amendment, nevertheless

(a) require citizens wishing to practice professional planning (including trained and experienced planners) to demonstrate minimum professional planning competence by taking State planning examinations and obtaining a professional planners license, and (b) at the same time grant automatic licenses, without examination, to members of separate and distinct professions, including engineers, architects, and land surveyors, who do not possess (according to the State's own determinations) minimum professional planning competence?

STATEMENT

Appellants here include the New Jersey Chapter of a professional society known as the American Institute of Planners (AIP) and six individuals who are active practitioners in the profession of city and regional planning in New Jersey (R. 1a-2a).[1] They brought this action for declaratory and injunctive relief in the Superior Court, Chancery Division, of Mercer County, New Jersey, alleging that New Jersey's "Professional Planners Licensing Act" (N.J.S.A. 45:14A-1 *et seq.*) violated the Equal Protection and Due Process Clauses of the 14th Amendment to the Constitution of the United States. After a full evidentiary hearing on the merits the trial court held that the challenged statute did indeed violate the 14th Amendment and declared it

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[1] The printed record which was presented to the Supreme Court of New Jersey consisted of a two-volume "Appendix for Appellants" and a one-volume "Appendix for Respondents." Because the two-volume Appendix for Appellants contains the bulk of the evidence, all references to these two volumes in this Jurisdictional Statement will be indicated by "R. —". References to the "Appendix for Respondents" will be identified by the full title. References to the Appendices to this Jurisdictional Statement will be "App. A" and "App. B."

invalid on that ground. On appeal to the Supreme Court of New Jersey, however, that determination was reversed with one judge dissenting. Appellants now respectfully submit to this Court that the latter decision of the Supreme Court of New Jersey constitutes an erroneous determination of a substantial question involving important Federal Constitutional rights.[1a]

A. The Challenged Statutory Scheme

In the last half century, in response to the enormous problems created by rapidly increasing "urbanization," there has come into being, both in this country and abroad, a profession known generally as "city and regional planning." With the population explosion giving rise to a multitude of urban problems, including growing slum areas, traffic congestion, air and water pollution, inadequate parks and recreational facilities, and imbalance between low income groups and job opportunities, one major response of State and local governments throughout the country has been to develop, under the guidance of the professional planner, a system of comprehensive long-range land-use planning in the form of individual "master plans" developed by the planner for the particular political unit involved (town, city, county, region, or State).

The need for professional expertise in the preparation of such master plans is now widely recognized throughout the United States. Among the 30 to 40 colleges and universities in this country which offer separate planning curricula it is now generally agreed that professional planning competence requires a bach-

[1a] The Federal question was raised in the Complaint (R. 4a-5a) and decided by both the trial court (App. A, p. 17a) and the Supreme Court of New Jersey (*id.* at 32a, 39a, 42a, 49a, 50a).

elor's degree followed by at least two years of graduate training leading to a master's degree or doctorate in planning (R. 445a). It is also widely recognized that following such academic training the planner requires several years of actual planning experience, typically with a governmental planning agency, before he can be permitted to take responsible charge of the preparation of a master plan for an entire community (R. 307a).

New Jersey, the "most urban" of the 50 states,[2] has been one of the leaders in recognizing the need for comprehensive planning under the direction of qualified professional planners. Some years ago the New Jersey Legislature enacted the Municipal Planning Act authorizing each municipality to prepare and adopt a "master plan" ("a composite of one or more mapped or written proposals recommending the physical development of the municipality"):

> "The master plan shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development and the maintenance of property values previously established. To such end, the master plan shall also include adequate provision for traffic and recreation, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of good civic design and arrangements, the wise and efficient expenditure of public funds, and adequate provision for public utilities and

[2] According to the 1960 Census, 88.6% of New Jersey's population was concentrated in urban centers.

other public requirements." (N.J.S.A. 40:55-1.12)[3]

Having thus defined the type of planning which it wanted, the Legislature of New Jersey in 1962 took steps to insure that the task should be undertaken only by those with sufficient professional qualifications to insure competent performance. In 1962 it enacted the Professional Planners Licensing Act, the first of its kind in the United States, providing that thenceforth no person should practice professional planning in New Jersey unless licensed by the State. The Act stated that,

> "In order to safeguard life, health and property, and promote the public welfare, any person practicing or offering to practice professional planning in this State shall hereafter be required to submit evidence that he is qualified so to practice and shall be licensed as hereinafter provided. After the effective date of this act, it shall be unlawful for any person to practice or to offer to practice professional planning in this State, or to use the title 'professional planner' or any other title, sign, card or device in such manner as to tend to convey the

[3] The statute also provided the following:

"In scope, the master plan may cover proposals for: (a) the use of land and buildings—residential, commercial, industrial, mining, agricultural, park, and other like matters; (b) services—water supply, utilities, sewerage, and other like matters; (c) transportation—streets, parking, public transit, freight facilities, airports, and other like matters; (d) housing—residential standards, slum clearance and redevelopment, and other like matters; (e) conservation—water, forest, soil, flood control, and other like matters; (f) public and semi-public facilities—civic center, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals, and other like matters; (g) the distribution and density of population; (h) other elements of municipal growth and development." (N.J.S.A. 40:55-1.11.)

impression that such person is practicing professional planning or is a professional planner, unless such person is duly licensed under the provisions of this act." (N.J.S.A. 45:14A-1.)

The statute provided for the establishment of a new administrative agency called "the State Board of Professional Planners" (N.J.S.A. 45:14A-2, -4), consisting of "five members who shall be professional planners" (*id.*), and directed that any applicant for license as a professional planner submit to the Board a showing of the following minimum educational and experiential qualifications:

"(1) A graduate degree in professional planning from an accredited college or university in a curriculum offering instruction in such recognized planning subjects as principles of land use planning, history of city planning, planning project design, and planning law and administration, as shall be approved by the board; with a minimum of 3 years experience in the full time practice of professional planning; or

"(2) An undergraduate degree from an accredited college or university in a curriculm offering a major or option comprising a minimum of 21 credit hours in such recognized planning subjects as shall be approved by the board; with a minimum of 4 years experience in the full-time practice of professional planning; or

"(3) Graduation from a secondary school and at least 12 years of professional planning experience acceptable to the board; or

"(4) For a period of 8 years only subsequent to July 1, 1963, a degree in a closely related course of study such as architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science or economics, with a minimum of 18 credit hours in recognized plan-

ning subjects included as part of or in addition to such courses of study in an accredited college or university, with a minimum of 5 years experience in the full-time practice of professional planning." (N.J.S.A. 45:14A-9.)

Thus the New Jersey Legislature provided as a general matter that anyone who wanted to be licensed as a professional planner had to show that he had minimal qualifications: either (a) that he had had formal planning education and some minimal planning experience or (b) in the absence of such formal planning education, that he had had substantial experience in actual professional planning.

The Legislature did not rely merely on a demonstration of education or experience. It also provided generally that anyone wishing to enter the profession had to take and pass a written examination on the following subjects:

"(1) History of urban, rural, and regional planning.

"(2) Fundamental theories, research methods and common basic standards in professional planning.

"(3) Administrative and legal problems, instruments and methods.

"(4) Current planning design and techniques.

"(5) History, principles and requirements of planning and zoning procedures in the State of New Jersey." (N.J.S.A. 45:14A-9.)[4]

[4] Not unnaturally the statute contains a "grandfather" exemption from the examination requirement. Section 19 of the Act provides that persons having specified combinations of training and experience in planning may be granted a license without examination, but by its terms the grandfather clause operated only for one year following the passage of the statute. (N.J.S.A. 45:14A-19.)

Having spelled out the foregoing elaborate prerequisites to an actual demonstration of competence, the State Legislature then reversed its field. To the foregoing structure it appended this exception:

> "The board upon application therefor and the payment of the application and license fees fixed by this act shall issue a certificate of license as a professional planner to any duly licensed professional engineer, licensed land surveyor or registered architect of New Jersey." (N.J.S.A. 45:14A-11.)

In other words, after setting up a careful series of safeguards to insure that professional planners licenses should be granted only to those with actual planning competence (acquired through training and experience and confirmed by examination), the statute then allows the issuance of an automatic professional planner's license to anyone who has been licensed as an engineer, land surveyor or architect, *whether or not* he has any specific planning competence. It is this automatic entry provision which appellants here attack as embodying an irrational and invidious discrimination.

B. The Relationships Between the Relevant Professions

It is conceded that there is some relationship between the profession of city planning and various other disciplines. Recognition of such relationships is contained in Section 9(4) of the Professional Planners Licensing Act (quoted at p. 7 above), which characterizes various other professional disciplines as being "closely related" to planning. The other disciplines so identified are architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science, and economics. Land surveying is not included in the list.

The evidence at the trial demonstrated the type of contact which can occur between the professional planner and the members of such "closely related" professions. Such contact can occur either during the planning process itself or at the stage when a completed master plan for a particular community is being "implemented." For example, a professional planner who is in the process of preparing a master plan may from time to time find it useful to obtain data from an engineer or an architect (*e.g.*, data with respect to the feasibility of constructing a particular structure at a particular site; R. 87a)—just as he may find it useful to obtain data from lawyers, sociologists, geographers, and economists (R. 406a). And, of course, when the master plan has been completed and is being put into effect, the services of engineers, architects, and land surveyors will be required in order to construct particular physical facilities. But the fact that *some* relationship exists between the planning profession and the other professions does not mean that all, or even most, of the skills of the planner are encompassed within each of the other professions. On the contrary, as demonstrated below, both the Legislature of New Jersey and the trier of the facts below concluded that the planning profession involves numerous skills which are not possessed by the other three professions and that planning is therefore a completely separate and distinct profession from the other three.

1. *Planning vs. Engineering.* The New Jersey statute which sets out the requirements for obtaining an engineering license defines a "professional engineer" as "a person who by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical ex-

perience, is qualified to practice professional engineering. . . ." (N.J.S.A. 45:8-28). In order to obtain a professional engineer's license the applicant need not have attended school or college; he simply needs (a) to demonstrate that he has had substantial engineering experience[6] and (b) to pass a three-part examination covering the following:

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[6] The following are the precise qualifications:

"a. Graduation from an approved course in engineering of 4 years or more in a school or college approved by the board as of satisfactory standing; a specific record of an additional 4 years or more of active practice in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to be placed in responsible charge of such work; and successfully passing a written or written and oral examination; or

"b. Successfully passing a written, or written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved 4-year engineering course; and a specific record of 8 years or more of active practice in engineering work of a character satisfactory to the board and indicating that the applicant is competent to be placed in responsible charge of such work; or

"c. A specific record of 15 years or more of lawful practice in professional engineering work of a character satisfactory to the board and indicating that the applicant is qualified to design or supervise construction of engineering works and provided applicant is not less than 35 years of age; or

"d. A certificate of qualification or registration issued to him by proper authority of the National Council of State Boards of Engineering Examiners, or of the National Bureau of Engineering Registration may, in the discretion of the board, be accepted as minimum evidence satisfactory to the board that the applicant is qualified for license as a professional engineer; or

"e. A certificate of qualification of registration, issued by any State or territory or possession of the United States, or of any country, may, in the discretion of the board, be accepted as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer; provided, requirements for license by issuing agency are at least comparable to those of the board. (N.J.S.A. 45:8-34).

"Part I—Basic engineering sciences—This examination is intended to cover the practical application of the basic engineering sciences, such as hydraulics, thermodynamics, chemistry and electricity.

"Part II—Structural design—This examination is intended to establish the applicant's competency to plan, structurally design and supervise the construction of buildings and similar structures.

"Part III—Specialized training of engineers—This examination is intended to cover the more advanced and specialized professional training and experience of engineers in their chosen field of engineering." (N.J.S.A. 45:8-35.)

These requirements should be contrasted with the skills required of the professional planner under the New Jersey planning statutes previously discussed. Under New Jersey law the professional planner must be competent to deal with problems involving (among other things) land use, public services, transportation, housing (including problems of residential standards, slum clearance and redevelopment), conservation, education, recreation, population distribution and density, public finance, public administration, law and zoning (see pp. 5-7 *supra*). As determined by the New Jersey Legislature itself, none of these planning skills are required to obtain a professional engineer's license.

The legislative recognition of the separateness of planning and engineering is also embedded in the Professional Planners Licensing Act. To begin with, Section 2 of the Act explicitly provides as follows:

"The work of the professional planner shall not include or supersede any of the duties of an at-

> torney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey." (N.J.S.A. 45:14A-2.)

Secondly, in terms of educational background, the Act characterizes academic training in "engineering" as being "closely related" to training in city planning (N.J.S.A. 45:14A-9), but the very same section of the statute specifically provides that, if a person with academic training in engineering wishes to become a professional planner, additional academic work in planning itself and "five years' experience in the full-time practice of professional planning" will be necessary in order to give him the requisite planning skills. (*Id.*) Finally, and most importantly, at the time the statute was passed, it had appended to it a statement which said in part as follows:

> "Planning is a distinct, separate profession, which requires specialized training. It is not a branch of engineering, architecture or any other profession." (App. A, p. 13a).

The foregoing statement constitutes the only available legislative history with respect to this statute. (*Id.*) The statement, taken together with the statutory provisions themselves, in effect amounts to a legislative finding that engineering skills are not equivalent to planning skills.

The foregoing conclusions of the Legislature were confirmed at the trial. Appellants called a series of distinguished expert witnesses who had an intimate acquaintance with the relationship between the planning and the engineering professions and who testified unequivocally that engineering competence is not equivalent to planning competence (R. 72a, 201a, 304a, 330a,

458a). Moreover, appellees called several prominent representatives of the engineering profession, and they too agreed that engineering competence is not equivalent to planning competence.[4] On this basis the trial court explicitly found—in a finding which was not disputed by the Supreme Court of New Jersey—"that professional city planning is a separate and distinct profession and differs from that of professional engineering, architecture and land surveying." (App. A, p. 13a).

In concluding that it is rational to grant an automatic license to a professional engineer without any showing that he possesses the "separate and distinct" skills of the planner, the Supreme Court of New Jersey purported to rely on three propositions. First, the court stated flatly as follows:

> "A permissible inference from the record is that the lawmakers were aware that over the years persons who were qualified and licensed by the State in other disciplines, such as engineering, architecture and to a lesser extent land surveying, had been preparing such master plans." (App. A., p. 43a).

There are several difficulties with this proposition. First, there is no legislative history or other "record"

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[4] For example, John G. Reuter, a professional engineer and land surveyor called as an expert witness by the appellees, testified as follows:

"Q. And in your opinion would a professional engineer holding an engineering degree be competent to prepare a master plan in the State of New Jersey?

"A. Well, not per se. I mean he would need [planning] experience. There is no question about this. Just because he is a licensed engineer doesn't say he is qualified to draw a master plan." (R. 393a.)

showing any such "awareness" on the part of "the lawmakers." Secondly, the evidentiary record at the trial conclusively refutes the notion that engineers (and architects and land surveyors) have been preparing master plans. The evidence revealed not a single instance of an engineer (or architect or land surveyor) having prepared a master plan without the help of a professional planner, and there was abundant evidence that in fact responsible planning jobs in this country are *not* being undertaken and performed by persons whose only training and experience has been in engineering.[1] And finally, even if it were true that *some* engineers have been preparing master plans without benefit of training or experience in planning, it certainly does not follow that *all* licensed engineers may be considered to have the requisite skills to engage in professional planning. On the contrary, the trial court found that the evidence was "overwhelming that there exists a great number of engineers who are not qualified" to prepare a master plan (App. A., p. 15a).

The second factual proposition advanced by the New Jersey Supreme Court was as follows:

> "It is worthy of note . . . that the current curriculum catalog for the engineering course at Newark College of Engineering requires a course in 'Elements of Industrial Growth'—a study of 'social, economic, cultural, and political forces,' and provides electives in planning subjects. The civil engineering curriculum at Rutgers, The State University, requires a course in 'Development of

[1] See the uncontradicted testimony of Mr. Dennis O'Harrow, an expert on employment in the city planning field. He made clear that planning jobs are not being filled by engineers or members of other "related" professions (R. 196a).

> Western Civilization' and at least 12 credit hours in 'Humanities and Social Studies'." (App. A., p. 44a).

Since neither of the specified academic curricula are in the record, appellants cannot now comment on the content of the identified courses except to point out that the former Chairman of the Department of City and Regional Planning at Rutgers—who also happended to be a licensed professional engineer—testified very clearly that the engineering curriculum at Rugters (including specifically the course in "Development of Western Civilization", which is "essentially a background course") does *not* give rise to the skills required of the professional planner in New Jersey or anywhere else (R. 377a). His judgment, moreover, was completely consistent with that of the faculties of the leading universities in this country, which have carefully differentiated between their engineering and planning curricula, establishing separate departments and separate courses of study (R. 445a). Furthermore, the students themselves make the same distinction. For example, at the Massachusetts Institute of Technology in 1965 there were 3,000 candidates for the engineering degree—substantially all of whom would presumably be able to qualify for a professional engineer's license in New Jersey—and only five out of those 3,000 students took courses in MIT's Department of City and Regional Planning (R. 442a). Engineering training in America's leading universities simply does not produce professional planners.

Finally, the New Jersey Supreme Court referred to the asserted fact that "historically"—meaning long before the advent of planning as we know it today—some of the persons who first attempted to prepare

comprehensive plans for particular communities were engineers by background.[8] (Others were botanists, lawyers, and landscape architects; R. 61a, 64a, 65a). Whether fledgling professional activities in the 18th and 19th centuries, long before the development of modern planning, can be used to justify legislation which causes invidious discrimination under 20th century conditions is clearly open to question.

2. *Planning vs. Architecture.* Just as the New Jersey Legislature has recognized the factual distinctions between planners and engineers, it has recognized comparable distinctions between planners and architects. To begin with, the State Legislature has directed that every applicant for an architectural license must take a specialized professional examination covering the following seven subjects:

> "... part I, building design; part II, site planning; part III, history and theory of architecture; part IV, building construction; part V, structural design; part VI, professional administration; part VII, building equipment." (N.J.S.A. 45:3-5)

It will be seen that there is no overlap between the foregoing subjects and the matters with which the professional planner must be concerned under the law of New Jersey (see pp. 5-8 *supra*).

Again, the statement which accompanied the Professional Planners Licensing Act declared that "planning is a distinct, separate profession, which requires specialized training" and that planning "is not a branch of ... architecture (App. A., p. 13a). Similarly, in the

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[8] For example, Major L'Enfant, who laid out the famous "cartwheel" design for the City of Washington, D. C., was a military engineer by background (R. 64a).

Act itself the Legislature provided that "the work of the profesional planner shall not include or supersede any of the duties of . . . . [a] registered architect" (N.J.S.A. 45:14A-2), and if a person with academic training in architecture wishes to become a professional planner, he must first show that he has had academic training in planning as well *and* "five years' experience in the full-time practice of professional planning" (N.J.S.A. 45:14A-9). Thus the Legislature itself has found as a fact that architectural skills are not equivalent to planning skills.

With respect to architecture, too, the legislative findings of separateness were confirmed at the trial. The appellants brought forward overwhelming proof that competence in architecture is not equivalent to competence in planning (R. 72a, 195a, 304a, 380a, 452a), and the *only* professional architect called by the appellees testified to the same effect. With respect to the question whether a registered architect is qualified, solely by reason of his architectural training and experience, to prepare a comprehensive master plan, the witness stated as follows:

> ". . . I don't think I could say that [such] a person is automatically competent to do a total comprehensive plan as covered by the statute. Relatively few architects are experienced enough in this field to wish to undertake such a responsibility. There are some that do, but they represent a relatively small portion of the profession." (R. 574a-575a.)

On the basis of such undisputed evidence the trial court found—again without contradiction by the Supreme Court of New Jersey—that "professional city planning is a separate and distinct profession and

differs from that of . . . architecture . . ." (App. A., p. 13a).

Again the New Jersey Supreme Court attempted a multiple answer to the foregoing legislatively and judicially determined facts. First, contrary to the record evidence (see p. 15 *supra*), the State Supreme Court simply asserted that *some* registered architects have prepared master plans in the past. Second, the court "noted that the current architecture curriculum of Princeton University includes a course in 'City Planning' " and that "[a]t Massachusetts Institute of Technology the curriculum in architecture contains courses in 'City Planning' and 'Urban Social Structure & Process.' " (App. A, pp. 44a-45a). In reply appellants note that, although the Princeton curriculum is not a matter of record, we are advised that Princeton's "City Planning" course is an elective "survey course" which is not taken by all students and which does not even purport to provide professional competence in planning. And with respect to the implication that MIT's architectural curriculum provides expertise in professional planning, the explicit testimony by the head of MIT's Department of City and Regional Planning was squarely to the contrary (R. 443a, 452a, 453a).

3. *Planning vs. Land Surveying.* According to the law of New Jersey, "land surveying" is defined as follows:

> "[the] surveying of areas for their correct determination and description and for conveyancing, and for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof, and such topographical survey and land development as is incidental to the land survey." (N.J.S.A. 48:8-28.)

In other words, a land surveyor is a man with a transit who establishes metes, bounds, and topography.

In order to obtain a license as a land surveyor in New Jersey, the applicant need have no academic training of any kind. Indeed, he does not even need to take an examination in land surveying; he need only show that he has had actual experience "in land surveying work" (N.J.S.A. 45: 8-35(2)(c)). Both the Legislature and the trial court made the usual findings that land surveying is a profession which is separate and distinct from city planning and which involves entirely different skills (see pp. 13-14 *supra*).

Moreover, throughout this litigation the role of the land surveyor has remained an enigma. At no point in this case has anyone ever suggested a justification for the automatic licensing of land surveyors as professional city planners. The appellants at the trial came forward with substantial expert testimony to the effect that land surveyors are not competent to be in responsible charge of preparing master plans (R. 75a-76a, 305a, 381a, 453a), and no one at the trial disputed that conclusion. No land surveyor testified; no evidence was offered to show any coincidence between the skills of the land surveyor and the planner; and the Supreme Court of New Jersey itself offered no justification for treating land surveyors as city planners. The court did say that "over the years persons who were qualified and licensed by the state in other disciplines, such as engineering, architecture and *to a lesser extent land surveying*, had been preparing such master plans" (App. A, p. 43a; emphasis supplied), but that proposition—which is refuted by evidence in the record (see p. 15 *supra*)—is all that the court said on the subject.

C. The Impact of the Statute

The record contains a study prepared by the appellee New Jersey State Board of Professional Planners with respect to the applications for planners' licenses filed in the first three years after the passage of the Act.* The study shows that in that period 555 persons applied for professional planners licenses. Of these applicants 254 or 46 per cent were making application on the basis of actual planning qualifications, but the remaining 301 applicants or 54 per cent of the total were engineers, architects, and land surveyors seeking automatic planners licenses without any showing of competence. Furthermore, to the extent that the applications themselves reveal the backgrounds of the persons applying for such automatic licenses, it appears that the vast majority of such applicants for automatic licenses had absolutely no training or experience in professional planning.

In fact, the 301 members of the favored professions who actually applied for licenses represent only a minute portion of the membership of these professions in New Jersey. The record indicates that in 1965 there were over 9,000 licensed engineers in New Jersey, of whom approximately 35 per cent were mechanical engineers, 29 per cent were civil engineers, 25 per cent were electrical engineers, 10 per cent were chemical engineers, and the balance were mining, ceramic and agricultural engineers (Appendix for Respondents, pp. 4a-10a). In addition, there were approximately 2,500 registered architects and almost 1,000 licensed land survey-

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* The Clerk of the court below made two certifications of record, one on April 27, 1967, and the other on June 15, 1967. The study referred to in the text is included in the second certification (June 15) as "Exhibit P-15".

ors (*id.* at 1a, 46a). Thus there are approximately 12,000 licensed members of the favored professions who are entitled to automatic professional planners licenses under the challenged statute.

Under the law of New Jersey, no member of one of the three preferred professions—engineering, architecture and land surveying—is automatically permitted to practice in one of the other two preferred professions. In order for a licensed engineer to practice architecture in New Jersey, he must pass an architectural examination and demonstrate his competence in the "separate and distinct" architectural field. (N.J.S.A. 45: 3-5.1.) Similarly, if an architect wishes to practice professional engineering, he must take the engineering examination like anybody else (N.J.S.A. 45: 8-35). And yet, under the statute challenged here, every one of the thousands of licensed engineers, architects and land surveyors in the State of New Jersey is automatically entitled to obtain a professional planners license without examination, while the State's professional planners are forbidden to practice their calling until they have demonstrated their qualifications and passed a professional planning examination.

THE QUESTIONS ARE SUBSTANTIAL

With the emergence of city planning as a recognized discipline whose professional integrity is important to the entire community, it was perhaps inevitable that sooner or later one of the more urbanized states, beset by all the enormous problems which urbanization involves, would undertake for the first time to require professional planning licensing for the protection of the public. As it happens, New Jersey was the first such state, and the fate of the New Jersey statute in the

courts is undoubtedly being closely watched across the country. Other states will surely look to the New Jersey precedent to see what may or may not be done in the regulatory field with respect to the new and important planning profession. For these reasons the question presented on this appeal is of genuine national significance.

The New Jersey statute permits every licensed engineer, architect, and land surveyor to obtain a professional planners license without having to scale any of the educational, experiential, or examination hurdles which are placed before all other citizens in order to keep out of the planning profession those who lack professional planning qualifications. Since this exemption for a favored class bears no reasonable relation to the purpose of the legislation, the issues presented on this appeal are similar to those involved in *Morey* v. *Doud*, 354 U.S. 457 (1957).

In the exercise of its broad police powers a state may, of course, draw reasonable lines between those who seek licenses to pursue a particular occupation. ". . . [T]he Equal Protection Clause does not require that every state regulatory statute apply to all in the same business. . . ." *Id.* at 465. Furthermore, in assessing a claim of unconstitutionality directed at a licensing statute for lack of a rational basis, the Federal courts will give to the state the benefit of every doubt. *Williamson* v. *Lee Optical of Okla.*, 348 U.S. 483 (1955). The latitude thus afforded the states is admittedly broad; it certainly encompasses the grant of special exemptions from licensing.

However, this does not mean, even as a practical matter, that the states operate at large in the licensing

field. The police powers in the area are not unlimited. ". . . [A] statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found." *Morey* v. *Doud, supra* at 465. Further, "[d]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." *Louisville Gas & E. Co.* v. *Coleman*, 277 U.S. 32, 37-38 (1928). The constitutional test is simply whether the legislation may be said to have a rational basis. *Williamson* v. *Lee Optical Co., supra*, at 491. No such rational basis exists here.

This case is unusual in several respects. First, because the State Legislature itself determined the existence of clear distinctions between the different classes of citizens involved, the invidious discrimination brought about by the statute appears on the face of the legislation itself. Moreover, the irrationality of the legislative approach is made evident by the various strange inconsistencies and anomalies which emerge from the statutory scheme. The opinion of the Supreme Court of New Jersey simply ignored these aspects of the legislation.

Secondly, the case is unusual because of the remarkable rationale advanced by the court below in its attempt to square the legislation with constitutional requirements. The rationale starts from a "factual" premise which is, in fact, erroneous. But, more importantly, even if the premise is accepted as valid, the asserted conclusion of constitutionality simply does not follow. Specifically, the asserted justification for the automatic licensing of the preferred professions is that, assuming that a *few* members of those professions possess professional planning competence, it follows that most if not all such members possess such

competence. Of course it does not so follow. By failing to recognize a difference between the allegedly qualified "few" and the admittedly unqualified "many," the State Supreme Court reached a demonstrably erroneous conclusion on an important question of Federal constitutional law.

I. The Invidious Discrimination Effected by the Challenged Statute, and the Irrationality of the Legislative Scheme, Appear on the Face of the Statutes Involved.

At the outset it should be noted that in this case, unlike the situation in *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, 252-53 (1964), there is no substantial legislative history which could be thought to provide a rational basis for the automatic licensing privileges conferred upon the preferred professions. Although the New Jersey Supreme Court indulged in a number of assumptions as to what "the lawmakers" might have had in mind when they passed the statute (see p. 14, *supra*), in fact there were no committee hearings, committee reports, or floor debates to which the court could refer. In fact, the only legislative document cited by either of the state courts contains the flat statement that city planning is a profession "separate and distinct" from the professions of engineering, architecture and land surveying (see p. 13 *supra*). The state trial court emphasized this legislative document in concluding that the statute violated the Federal Constitution, but the Supreme Court of New Jersey gave it no weight whatever.

As demonstrated earlier, moreover, the statutory provisions themselves reflect the same ultimate finding—that the skills of the engineer, the architect, and the land surveyor do not coincide with the skills of the

professional planner. In fact, the New Jersey Legislature determined, and the record and the trial court have confirmed, that professional planning involves a broad spectrum of related but varied skills. It is not enough, for example, that the planner be knowledgeable in the area of "residential standards, slum clearance and re-development" or that he be familiar with the "history, principles and requirements of planning and zoning procedures" or that he understand the workings of "civic centers, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals, and other like matters"; he must be knowledgeable in all of these fields and many others as well (see pp. 5-8 *supra*).

Conversely, the field of expertise encompassed within each of the three favored professions is relatively narrow. As shown by the determinations made by the New Jersey State Legislature and the trial court, the engineer typically must master "the practical application of the basic engineering sciences" so as to enable him "to plan, structurally design, and supervise the construction of buildings and similar structures" (see p. 12 *supra*); the architect typically designs buildings (see p. 17 *supra*); and the land surveyor determines metes and bounds and the topography within them (see p. 19 *supra*). None of these professional disciplines requires knowledge or competence in (for example) the sociological, economic, and governmental areas in which the planner does so much of his work.[10]

[10] In its effort to avoid these legislatively-recognized realities, the New Jersey Supreme Court pointed out that, in defining the functions of the three favored professions, the New Jersey statutes used such phrases as "planning," "site planning," and "land development" (App. A., pp. 44a-45a). When each such phrase is read in context, however, it is apparent that the quoted phrases do

The distinction between the planner's skills and those of the other professions was perhaps most clearly recognized by the New Jersey Legislature in the interim licensing procedure under the Professional Planners Licensing Act. As noted above, Section 9 of the Act provides, as a special dispensation, that for a period of eight years from enactment of the Act a person who holds a degree in engineering or architecture (or in one of eight other specified fields) may qualify for a professional planner's license *if* he has also had specified academic training in planning and "a minimum of five years' experience in the full-time practice of professional planning" (N.J.S.A. 45:14A-9).[11] Here is clear recognition that neither engineering competence nor architectural competence is planning competence; if an applicant's only skills lie in the field of engineering or architecture, he must acquire planning skills as well before he is qualified even to take the planning examination for a professional planner's license. And yet under Section 11 of the same statute a person who has only engineering skills (or architectural skills or land surveying skills) is not only auto-

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not relate, even remotely, to the preparation of a master plan for an entire community. With respect to engineering the word "planning" refers only to the "planning of the construction" of an "engineering or industrial project" (N.J.S.A. 45:8-28(b)); with respect to architecture the phrase "site planning" refers only to the physical arrangement of objects on a "site" (N.J.S.A. 45:3-5); and with respect to land surveying the reference to "land development" relates only to the establishment of land boundaries and topographical lines "incidental to [a] land survey" (N.J.S.A. 45:8-28(e)).

[11] The same interim privilege is granted to persons with academic training in the following "closely related courses of study": architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science, and economics (*id.*).

matically qualified for a license but can get one without taking any examination in the planning discipline.

The irrationality of allowing a person who has only the relatively specialized skills of one of the three favored professions to undertake all of the multiple functions of the planner is sharply emphasized by the fact that under the New Jersey statutes no member of one of the three favored professions is automatically allowed to practice in one of the other favored professions. Thus under New Jersey law an engineer is treated as being unqualified to practice architecture; an architect is not qualified to practice engineering; and a land surveyor is not qualified to practice either of the other professions (see p. 22 *supra*). Assuming for the moment, then, that city planning involves some "engineering elements"—thus providing the so-called "overlap" upon which the defenders of the statute so heavily rely—it is clear that the architect and the land surveyor are not considered qualified to cope with the alleged "engineering elements" of planning. Similarly, the engineer is not considered qualified to deal with any "architectural" and "land surveying elements" of planning, and the land surveyor is not considered qualified to deal with either the "engineering" or the "architectural elements" of the planning profession. In short, even if we assume that each of the three favored professions "overlaps" the spectrum of skills involved in the planning discipline, it is clear that each of the three overlaps the spectrum at a different point—and yet the automatic entry provision treats all three favored professions as having precisely equivalent competence in the planning field. Indeed, in defiance of the realities recognized by the Legislature and the trial court, every member of the three favored

professions is treated as though he enjoyed total competence in every one of the multiple areas included within the total planning spectrum.

In practical application the automatic entry provision gives rise to a tangle of contradictory and irrational results. Statutory inconsistencies do not in themselves constitute constitutional deficiencies, but in this case the mind boggles at the anomalies implicit in the statutory scheme. For example:

—A professional planner's license may automatically issue to an electrical engineer who obtained his training and his engineering license 30 years ago, without regard to the type of engineering which he has practiced (*e.g.*, repairing electrical generators) or even whether he has ever practiced his profession at all. Having received his automatic license, such a man is then legally entitled to hold himself as a professional planner and to take on the responsibility of preparing a master plan for a major New Jersey city. But a man who has a doctorate in planning from M.I.T. and 20 years of active experience in the preparation of major master plans is prohibited from continuing to practice his profession (on pain of criminal penalty) unless he presents his qualifications to the State Board and takes and passes an examination.

—An individual who *has never been to school* and who has never passed any examination of any kind, but who has spent 15 years "in land surveying work" (*e.g.*, sighting through a transit on construction jobs), may obtain a license as a land surveyor and thus may automatically obtain a professional planner's license so that he may thenceforth be in responsible charge of preparing master plans for entire communities. On

the other hand, a man who has graduated from a secondary school and had 10 years of professional planning experience is *ineligible* to take the examination for a professional planners license or to obtain such a license. Indeed, even a man with a doctorate in professional planning and two years of experience in the full-time practice of professional planning may not take the examination or obtain a license.

—Without taking any additional professional examination, an agricultural engineer can automatically become a professional city planner, and a land surveyor can automatically become a professional city planner, but an engineer cannot become a surveyor, and a professional city planner cannot become either an engineer or a land surveyor.

The New Jersey Supreme Court paid no heed to these glaring anomalies in New Jersey's licensing scheme. And while, as we have noted, inconsistencies are not dispositive in and of themselves, here they are of such magnitude as to overcome any presumption of rationality which might otherwise attach to state legislative action. At the very least the statutory anomalies are sufficiently bizarre to call for plenary review of the decision below.

II. It Was Plain Error for the New Jersey Supreme Court to Ignore the Trial Court's Findings of Invidious Discrimination and to Assume That, Because a Few Members of the Preferred Groups Were Supposedly Qualified to be Professional Planners, All Members Are So Qualified and May Thus Constitutionally Be Granted Privileges Denied to Competent Planners.

Working from largely undisputed evidentiary facts with respect to the education and function of the various professional groups involved, the trial court below made explicit findings that the planning profession is "separate and distinct" from the other professions and that an engineer, architect, or land surveyor whose training and experience is entirely within his particular field is not qualified as a professional planner (App. A, pp. 13a, 15a). In making these specific findings the trial court took into account all of the arguments which have been advanced in favor of the automatic entry provision. For example, the court recognized that "historically" some of the persons who engaged in the earliest forms of city planning had been engineers and architects by background (*id.* at 15a). It also recognized the possibility of some "overlap" between the favored professions and the distinct profession of city planning (*id.* at 16a). And finally the trial court acknowledged that *some* members of the three favored professions may well have the planning competence to prepare a master plan (*id.* at 15a).

But the trial court also recognized the essential fact, which it found established by "overwhelming"

evidence, that *many* members of the distinct professions of engineering, architecture, and land surveying are *not* qualified to practice as professional planners (*id.*). Concluding that it is invidiously discriminatory to allow the "many" unqualified representatives of the favored professions to obtain automatic professional planners licenses, and at the same time to prohibit professional planners generally from practicing their profession without taking professional examinations, the trial court held that there was no rational basis for the automatic entry provision and that it thus violated the Equal Protection and Due Process Clauses of the 14th Amendment of the Federal Constitution (*id.* at 17a).

The Supreme Court of New Jersey, however, took a far more casual approach. It paid no attention to the statutory scheme which so clearly recognizes the distinctions between the several professions, and it failed to come to grips with the "overwhelming" evidence upon which the trial court based its findings of fact. Instead of dealing with those findings and attempting to show that they erred, the court below simply ignored them, even though those very findings "preclude the assumption that [the statute] rests upon some rational basis." *United States* v. *Carolene Products*, 304 U.S. 144, 152 (1938).

Moreover, the fragmentary efforts made by the New Jersey Supreme Court to deal with the factual relationships between the professions were really quite extraordinary. For example, as noted above, the court thought that a constitutional justification for the automatic entry provision could be found in the fact that Rutgers, the state university of New Jersey, requires

its civil engineering students to take a "cultural background" course entitled "Development of Western Civilization" (App. A, p. 44a; R. 377a). A survey course of that kind is admittedly a broadening educational experience. But a heightened awareness of general civilized values in the western world is hardly the equivalent of professional training and experience in preparing a "master plan" for a major urban area. In short, a review of the New Jersey Supreme Court's handling of the factual background of this case—which was the subject of such voluminous evidence and findings in the trial court below—has a tendency to undermine the confidence which one might otherwise have in a constitutional decision emanating from such a tribunal.

Be that as it may, the Supreme Court of New Jersey apparently regarded as critically important the premise, asserted in its opinion, that *some* architects, engineers and land surveyors had worked on master plans to some extent in the past. Leaving to one side the questionable factual basis of the premise (see p. 15 *supra*), the conclusion that the court drew from the premise is insupportable. The premise that some members of the class have had some planning experience hardly leads to the conclusion that all members of the class may rationally be treated as qualified professional planners. It is true that an individual engineer who has had planning experience might himself be qualified in the planning field, and if we were dealing with a "grandfather clause" which granted an automatic planning license to each such individual, there could be no constitutional objection. But the fact that a few such individuals exist certainly cannot support the wholesale elevation of all

members of the favored professions, present and future, to the preferred status of professional planners.

Moreover, on analysis, the lower court's reasoning is self-destructive. If, as the court suggests, it is reasonable to assume that a man who has worked on master plans has thereby acquired planning competence, it would seem to follow that the many architects, engineers, and land surveyors who have not worked on master plans are not qualified to engage in planning. And, pursuing the same line of reasoning, if actual work on master plans provides a rational basis for automatic entry into the planning profession, obviously the professional planner with planning training and practical planning experience should likewise be given an automatic right of entry without examination. Yet the statute does not so provide. An individual with specialized planning background must take the examination before he can enter his profession. In short, even if one accepts the lower court's formulation of the justification for the challenged statutory provision, the statute is still invidiously discriminatory.

We do not contend that the equal protection clause prohibits automatic entry into a licensed profession except where all members of the preferred groups are affirmatively shown to be qualified. That would be an unduly restrictive test. However, the clause does prohibit such classification in the absence of a rational basis for wholesale entry. In other words, to avoid the label of invidious discrimination as against those required to demonstrate their professional qualifications, there must be a reasonable basis for *assuming* the requisite qualifications on the part of those given auto-

matic entry rights. If no such rational assumption can be made, the entry provisions are unconstitutional.

Thus, the test in the instant case is whether there is a reasonable ground for assuming that those architects, engineers and surveyors entitled by statute to planning licenses are qualified to practice planning. And since all architects, engineers and surveyors are given automatic licenses, the assumption of qualification must apply to all members of each group, not just to some members. But, even under the decision below, only *some* members are said to have participated in the preparation of master plans; hence, historic pratice cannot supply the requisite rational support for automatic entry by *all* architects, engineers and surveyors.

Thus, stripped to its essentials, the decision below amounts to no more than a holding that automatic entry into the planning profession has a rational basis because that was what the statute itself called for. In our view, therefore, affirmance of the decision below would amount to validation of a bootstrap doctrine, under which the necessary support for state legislative action would be supplied by the very statutory language said to violate the Federal Constitution. Disposition of a constitutional issue on that basis would amount to something less than meaningful adjudication, particularly where, as here, the state trial court's specific findings of invidious discrimination based on a trial record were ignored by the state's supreme court and where the licensing provisions are, at best, a maze of inconsistencies, contradictions and anomalies, all of which work to the advantage of certain groups of would-be licensees at the expense of others.

CONCLUSION

Since the New Jersey legislation involved in this case may well set an enduring regulatory pattern for a profession which is rapidly becoming of vital importance to our increasingly urbanized society, the questions presented on this appeal are of genuine public importance. As a matter of fact and as a matter of constitutional law, there is no rational basis for the regulatory scheme involved. This case thus presents a substantial Federal constitutional question which should be resolved only after plenary review by this Court.

Respectfully submitted,

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